

## CHARITIES DEFINITION BILL 2003

### General Comments

In trying to define “charities” and “charitable purposes” it would seem the government might be opening a can of worms. This may become a very lucrative piece of legislation for the lawyers to argue about.

As soon as one starts to define something one creates boundaries that open the way for interpretation and disagreement. The judgments given in the Courts to date, based mainly on common law, may change considerably once this law has been passed. The comments made in the Explanatory Notes refer to previous Court opinions, but these decisions will no longer apply. New decisions will be based on the interpretation of the new Act.

Although this submission raises several questions about the proposed Act, the Explanatory Notes raise many additional points that should be given serious consideration before the Bill is passed. Reading the Explanatory Notes resulted in more confusion and worry about the possible interpretations that the Courts may come up with if the Bill is passed in its present form.

### Issues

#### *Part 1 - Section 3 – Definition, 1(b)*

An organisation which is not-for-profit and community based with a volunteer Board of Management elected by members is not a “government body”, but could be deemed to be “controlled by the government”. An organisation, which is funded by the government (either State or Federal) through a funding agreement that determines how the money is to be spent, could be seen to be tightly controlled by the funding body (ie, the government). If government funding is withdrawn, the organisation would be decimated or would be forced to close its doors forthwith.

#### *Part 2 - Section 4 Core Definitions 1(e)*

This definition gives the impression that an ‘ordinary’ offence would be permitted

#### *Part 2 - Section 5 Not-for-Profit entities (b)*

Some charitable organisations are quite big and deal with large amounts of money requiring Boards of Management to carry a considerable responsibility. Will this clause preclude organisations from providing reimbursement or allowances to cover expenses for Boards of Management?

#### *Part 2 – Section 8 Disqualifying Purposes 2(c)*

This proviso is a cause of great concern. Many charitable organisations, in particular peak bodies, lobby the government, Ministers and government members, to change decisions or to change the law and regulations to achieve a greater benefit for their members. This is an essential part of our democratic process and should not be restricted in any way.

We note paragraphs 1.54 and 1.55 in the Explanatory Notes, but this is only an opinion based on the present situation and not part of this Bill.

#### *Part 2 – Section 9 Open and non-discriminatory self-help groups (a)*

The common understanding of ‘non-discriminatory’ would enable any individual to become a member. However, the Explanatory Notes state that members of the group should be individuals who are affected by the disadvantage. That would be discriminatory! Non-affected relatives and friends are often very much affected by the disadvantage and are badly needed to get such a group established and to keep it going. In many instances the persons affected by the disadvantage are not capable of doing it themselves.

### *Explanatory Notes*

Of particular concern are statements made in paragraphs 1.18 to 1.27 of the Explanatory Notes.

- 1.18 “The issue of what constitutes Government control has been the subject of much case law.”
- 1.19 The terms “in the normal course of events” and “usually” and “will necessarily” indicate that this is also wide open to argument.
- 1.20 This paragraph mentions the possibility of a Government levy or tax. That could happen at any time in the future if or when the burden of (say) aged care became too heavy for the Government to carry without a special tax or surcharge. This has been discussed previously.
- 1.25 From time to time there has been suggestions made about the idea of making direct payments to individuals to give them the opportunity to arrange their own help. We are unaware of any consultations with relevant peak bodies, service providers or support groups on this subject.
- 1.27 The word “normally” raises obvious response of “when not?”

#### *Example 1.1*

A community welfare centre that provided funds for clients to purchase small items (such as cigarettes, bus fares etc.) could be affected by some of the preceding clauses

#### *Example 1.2*

Charitable organisations providing services to clients who are frail, aged or have disability seeks to protect its staff and its clients by offering free flu vaccine to its staff. In this situation, the benefits are certainly not one-sided. An organisation in this situation would need to know whether it could continue such beneficial practices.

#### *Example 1.3*

Support groups frequently rely on non-affected people for expertise and assistance in the establishment and on-going management of the group.

1.72 The last sentence of this paragraph and the preceding references endorse the writer’s opinion that this Bill will be a great source of revenue for the lawyers because it throws in doubt previous Court decisions and leaves many questions unanswered.

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